82-1018

In the

Supreme Court of the United States

October Term, 1982

No.

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether, under the Due Process Clause of the Fifth Amendment and Boddie v. Connecticut, 19 S. Ct. 780 (1971); Windsor v. McVeigh, 93 U.S. 274 (1876); Baldwin v. Hale, 1 Wall 223, 17 L.Ed. 531 (1963); Hovey v. Elliot, 167 U.S. 409, 17 S. Ct. 841, 42 L.Ed. 215 (1897) and Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950), the United States Court of Appeals for the Second Circuit may issue, sua sponte, under the All Writs Act, 28 U.S.C. § 1651, a permanent injunction without notice, without a hearing and without a request therefore, permanently enjoining a person who is not and never was a party to any of the proceedings before the Court?

The Court of Appeals answered this question in the affirmative.

2. Whether, under Boddie v. Connecticut, 19 S. Ct. 780 (1971); Windsor v. McVeigh, 93 U.S. 274 (1876); Baldwin v. Hale, 1 Wall 223, 17 L.Ed. 531 (1963); Havey v. Elliot, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897) and Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the United States Court of Appeals for the Second Circuit may issue, sua sponte, a permanent injunction against an attorney and a party barring future filings of papers in a bankruptcy proceeding, without affording a meaningful right to be heard at an evidentiary hearing and without allowing the right to present evidence or to call witnesses as part of a defense, and without allowing the attorney so enjoined the right to counsel, where such permanent injunction is tantamount to a limited disbarment.

3. Whether, under Brown v. Board of Education, 344 U.S. 1 (1952) and Putnam v. Day, 89 U.S. 60 (1874), the Supreme Court will take judicial notice of Findings of Fact in an Order the Hon. Edward J. Ryan Bankruptcy Judge, dated March 22, 1982, which Findings of Fact directly contradict the "gratuitous" findings of fact in the Court of Appeals Opinion reported 588 F.2d. 872 (1978), cert. denied, 444 U.S. 870 (1979), reh. denied 444 U.S. 975 (1979); and which were erroneously relied upon by the Court below as the foundation of the order and judgment for which review is sought herein, in order correct a "fraud and an injustice"? (Pepper v. Litton, 308 U.S. 295 (1939).

4. Whether, under the rulings in Hazel Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238 (1944) and Shawkee Mfg. Co. v. Hartford Empire Co., 322 U.S. 271 (1944), the Supreme Court has a duty to vacate and reverse the Court of Appeals order reported at 588 F.2d 872 (1978), for which certiorari was denied, based upon a "fraud on the Court" by one of its officers, a debtor in a Chapter XI reorganization proceeding, based upon the correct Findings of Fact as contained in the Order of the Hon. Edward J. Ryan, Bankruptcy Judge, dated March 22, 1982?

PARTIES

The parties in the United States Court of Appeals were the Petitioner, Rose Shuffman, As Executrix of the Estate of Oscar Shuffman, Deceased, David K. Shuffman, As Attorney for the Executrix, and Hartford Textile Corporation, Oxford Chemicals, Inc. and Wellington Print Works, Inc.

Rose Shuffman, individually, is not, and never was a party to the proceedings below.

TABLE OF CONTENTS

TABLE OF CITATIONS (or)

STATUTES and OTHER AUTHORITIES

Table of Citations (or)
Statutes and Other Authorities (Continued)

Table of Citations (or)
Statutes and Other Authorities (Continued)

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SUPREME COURT OF THE UNITED STATES

October Term, 1982

In the Matter of HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC. WELLINGTON PRINT WORKS, INC., Debtors.	:
ROSE SHUFFMAN, As Executrix of The Estate of OSCAR SHUFFMAN, Deceased, DAVID K. SHUFFMAN, As Attorney for the Executrix, and ROSE SHUFFMAN, Individually, Petitioner, -against- HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC. WELLINGTON PRINT WORKS, INC., Respondents.	:

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners pray that a writ of certiorari issue to review a Judgment of the United States Court of Appeals for the Second Circuit, entered on June 16, 1982.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Appendix A1, infra) is reported at 681 F.2d 895.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on June 16, 1982. The order of the United States Court of Appeals for the Second Circuit denying rehearing of the said order and judgment was entered on September 17, 1982, and appears as Appendix A8, infra.

There are no other orders at issue emanating from a lower court, as the order for which Supreme Court review is sought was a sua sponte permanent injunction originating in the United States Court of Appeals for the Second Circuit.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution, Due Process Clause, is involved here.

The All Writs Acts, 28 U.S.C. § 1651 is also involved herein.

STATEMENT OF FACTS

The facts underlying the original Shuffman-Hartford dispute have a long, tortuous and convoluted history, with many of the true facts only recently coming to light as a result of The Hartford Corporation's and Wellington Print Works, Inc.'s second round of Chapter 11's in less than six years filed in 1980. For the sake of clarity and brevity, the facts are presented here in two parts.[1]

Part I herein contains newly discovered or recently discovered facts which have just come to light as a result of The Hartford Corporation's and Wellington Print Works, Inc.'s newest round of Chapter 11's. These facts, gleaned from Hartford's books and records, and the Order of the Hon. Edward J. Ryan, Bankruptcy Judge, dated March 22, 1982, contradict the original findings of the various Courts made to date. Those original findings, made as they were in the absence of an evidentiary hearing, were based upon the representations, or misrepresentations, as the case may be, of Respondents Appellees and their counsel.

Part II contains the facts as they pertain to the sua sponte Order of the Court of Appeals dated June 16, 1982, permanently enjoining Rose Shuffman, individually, a non-party to the proceedings, and Rose Shuffman, As Executrix of the Estate of Oscar Shuffman, a party below, and David K. Shuffman, Esq., as counsel for the Executrix, from seeking a redress of any grievances in a court of law.

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[1] For the sake of brevity and judicial economy, the facts underlying the original Shuffman-Hartford dispute will not be repeated here. For a statement of those original facts, this Court's attention is respectfully invited to the Statement of Facts in Petitioner's original Petition for a Writ of Certiorari in case Docket No. 79-178, 444 U.S. 870 (1979)

FACTS (PART I)

On July 14, 1980, The Hartford Corporation, which had been merged in 1976 with Oxford Chemicals, Inc., without a meeting of shareholders or vote thereby, creating a new entity entitled The Hartford Corporation, with Oxford Chemicals as a division, filed a Petition for relief under Chapter 11 of Title 11 of the United States Code. Two weeks thereafter, on July 28, 1980, The Hartford Corporation was joined by Wellington Print Works, Inc., which also filed for Chapter 11 status. These new Chapter 11's came less than six years after Hartford, Oxford and Wellington's Confirmation and Discharge in their prior Chapter 11's before Bankruptcy Judge Roy Babitt on September 5, 1974.

Petitioner herein filed a claim in those proceedings, seeking, inter alia, payment of $3,346.71 volunteered by the debtors and ordered paid by Bankruptcy Judge Roy Babitt in his Amended Order dated August 26, 1977. Those monies represented commissions earned on deliveries made by Rudd Plastic Fabrics Corp. to the debtors after the date of Confirmation and Discharge on September 5, 1974 pursuant to a previously Court-approved Compromise Agreement to Resolve a Dispute with Rudd.

The "amended findings" incorporated into the Amended Order made by the Bankruptcy Judge were that the late Oscar Shuffman had entered into a "new" Post-Petition finders fee contract with the debtors. The original Opinion had held that the "simple fact" was that there was no contract between

Shuffman and the Respondent-debtors Post-Petition. While Petitioner always denied that a "new" contract was entered, the Respondents, who first denied the existence of any contract or liability, then changed their position to claim a "new" Post-Petition finder's fee agreement with Petitioner, when confronted with copies of checks showing voluntary payments to Petitioner up until the date of Confirmation and Discharge.

This resulted in the original Bankruptcy Judge's Amended Order. Respondents have since changed their position in the new Chapter 11's to claim that there was no new contract, and that the voluntary payments made during the original Chapter XI's up until the date of Confirmation were made out of the "goodness of their hearts". Respondents, based upon the Amended Order, were able to avoid payment of approximately $80,000 still due under Petitioner's original contract, which was never repudiated.

During the argument of a Motion to Rehear the subsequent Order affirming the original Bankruptcy Court's Amended Order, the District Court (Brieant, J.), expressed his understanding of what he thought the Bankruptcy Court's Amended Order had provided for thusly:

> THE COURT: That might all be true. But I don't think it would alter the result here, and of course you are appealing from a result, you are not appealing from some dictum that ...the bankruptcy court said on the record.

Your grievance, if you have one, is with the result of the order of the bankruptcy court, and as I read it, whether he is right or wrong, as to whether or not it determined pre-filing of at filing or post-filing, the decedent's estate has been or will be paid under the plan for everything that was delivered prior to filing, and will be paid under the subsequent order made by the bankruptcy judge for every bit of goods delivered by Rudd between filing and discharge or confirmation of the plan, if you want to call it that.

Now if anything was delivered after the confirmation of the plan, this debtor has walked out of the courthouse on the day of confirmation of his plan, and he is now sui juris, he can be sued by you, as you should, in the State Court or any place you can catch him, and I don't see that it's error in result.

Assuming the bankruptcy judge was wrong on his factual statement as to when it ended, and I legally think if you disagree with me on that, Mr. Shuffman, and we have such a fundamental disagreement on the legal point involved here that you might as well take your appeal. (Underscoring provided); (Transcript, March 28, 1978 at 9).

...

THE COURT: The debtor acted improperly and you had to live with what he did.

MR. ZIRINSKY: We certainly did not -- nothing more to say on that point, your Honor.

The only other point I want to make, your Honor, is the fact that the Court's decision is absolutely correct. (Transcript, March 28, 1978 at 22) (Underscoring provided)

The Court of Appeals, in its affirmance of the District Court's Order, repeated and reaffirmed the District Court's erroneous interpretation of what it thought it was approving, but was in fact not, after further assurances from the Respondents' counsel that the lower Courts' Opinions were correct, and that no jurisdiction was taken for the Post-Confirmation period. The Court of Appeals further specifically held that Petitioner could not be paid by the Bankruptcy Court or the appellate courts for monies earned after September 5, 1974, the date of confirmation and discharge, in the original Chapter XI's, as the Courts were supposed to have lost all jurisdiction to order further payments as of that date. The Court of Appeals affirmance, reported at 588 F.2d. 872 (1978), cert. denied 444 U.S. 870, reh. denied, 444 U.S. 875 (1979), specifically held as follows:

Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record established that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has not

> received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeal, but in a plenary action at law. See In re Gordon, 44 F.Supp. 581 (S.D.N.Y. 1942); 9 Collier on Bankruptcy ¶¶ 8.11, 8.12 (14th ed. 1975). (Underscoring provided)

Thereafter, and in response to a multitude of motions, arguments and appeals filed by the Petitioner seeking to inform the Court of its errors in an effort to have the Orders overturned, and more specifically to advise the Courts that they had in fact done that which they specifically said they could not and would not do, Respondents, by their counsel, continued to insist that jurisdiction ceased upon confirmation and discharge on September 5, 1974, and that no jurisdiction was exercised or monies ordered paid for the Post-Confirmation period.

However, in the new Chapter 11's, the Respondents sought to bar Petitioner herein, by claiming that she lacked standing as a creditor by virtue of Bankruptcy Judge Babitt's Amended Order which encompassed the $3,346.71 ordered paid under the earlier Court-approved Compromise agreement. The Respondents were forced to show the derivation of the $3,346.71 after the new Bankruptcy Judge, Edward J. Ryan, expressed his inability to comprehend the contradictions in the affirmances of the original Bankruptcy Judge's Amended Order.

On April 30, 1981, at a hearing held before Bankruptcy Judge Ryan in connection with Respondents'

challenge to Petitioner's creditor status, the following exchange evidencing the Bankruptcy Judge's confusion took place:

> MR. SHUFFMAN: Very simply, your Honor, that my client has standing as a creditor in the New Hartford Chapter XI via $3,346.17 which is owing to my client for post-confirmation deliveries by Rudd Plastic Fabric Corp. to Hartford Corporation. I do --
>
> THE COURT: Will you read that back.
>
> (The record was read.)
>
> THE COURT: Standing as a creditor is the issue that I have to decide; but after the words "Standing as a creditor," let me ask you, Mr. Zirinsky and counsel for the Committee, is there any question that as a result of post-first confirmation order services the estate of Oscar Shuffman is owed that sum of money?
>
> MR. ZIRINSKY: It's not a question of post-confirmation services. The commissions referred to arise out of a contract which was entered into between Hartford and Rudd during the pendency of the Chapter XI case.
>
> THE COURT: I am not carping for the sake of carping.
>
> MR. ZIRINSKY: There were no services rendered.

THE COURT: Just a minute. A record was made on your prima facie case.

MR. ZIRINSKY: Correct.

THE COURT: You have the exhibits I assume.

MR. ZIRINSKY: We have all the exhibits, your Honor.

THE COURT: I do not have, and I did not have, copies of those exhibits. I examined every one of them carefully as the case came in other than the two or three inches of tissue. I had an opportunity to read the Court of Appeal decision. In some way, which is still not clear to me, a court order was entered apparently directing that the sum be paid to the estate after the order of confirmation. Is this true?

MR. ZIRINSKY: Correct, your Honor.

THE COURT: Well, please, I'm going to ask you to get a record together so that if an Appellate Court has to review this, they will know exactly what we are talking about. (Underscoring provided)

Respondent Hartford's confirmation and discharge in the 1973 Chapter XI case occurred on September 5, 1974. The exhibits referred to by Bankruptcy Judge Ryan, Hartford's Commission Summary and Monthly Statements for the months of September, October,

November and December, 1974, conclusively prove that the $3,346.17 ordered paid by Bankruptcy Judge Babitt's Amended Order of August 26, 1977, and erroneously affirmed on appeal, were for Post-Confirmation commissions earned on Post-Confirmation deliveries.

Further confirmation of the fact that the $3,346.17 represented commissions earned after Confirmation and Discharge is contained in the debtors proposed Findings of Fact, Conclusions of Law and Order submitted to Bankruptcy Judge Ryan. The pertinent provisions of the Respondent's Order ousting Rose Shuffman, As Executrix, etc., as a creditor in the new Chapter 11's read as follows:

> ORDERED, ADJUDGED, DECREED, FOUND AND DETERMINED, as follows:
>
> 1. The claims asserted by Shuffman in tne Hartford Claims and the Wellington Claims are as follows:
>
> (a) $43.27 Prior to July 3, 1973 (Possible Priority)
>
> (b) $3,346.17 from September 5, 1974 --- December 31, 1974 (Possible priority) (Underscoring provided)
>
> (c) Approximately $75-77 Thousand from January 1, 1975 (Possible priority)

(d) Pro rata share of stockholders' derivative action which was deliberately omitted from Statements and Schedules in Case Nos. 73 B 674-676 (Possible priority)

(e) 2-3/4% of total cost of all merchandise purchased from Rudd Plastic Fabrics Corp. on all Orders placed up to and including September 14, 1976 (Possible priority)

(f) $5.85 Pro rata distribution of net profits for two years from September 5, 1974, plus interest

(g) $3,000.00 on uncashed checks given to Oscar Shuffman prior to July 3, 1973, plus any other moniew (sic) similarly represented by uncashed commission checks (Possible priority)

2. The claims described in items (a) and (f) of paragraph 1 hereof, represent distributions to be made in accordance with the consolidated Chapter XI plan, on Shuffman's general unsecured claim as allowed by the Bankruptcy Court, in the prior consolidated Chapter XI cases confirmed by the Bankruptcy Court on September 5, 1974, In re Hartford Textile Corporation, Oxford Chemicals, Inc. and Wellington Print Works, Inc. (S.D. N.Y., Arrangement Nos. 73 B 674-676, inclusive) (the "Prior Chapter XI Cases").

3. The claim described in item (b) of Paragraph 1 hereof, is that amount which is stated by Hartford Textile Corporation to be owing to Shuffman, based upon commissions to be paid to Shuffman under a certain agreement with Rudd Plastic Fabrics Corp. dated November 2, 1973, and which amount was incorporated in the Bankruptcy Court's amended order dated August 26, 1977 in the Prior Chapter XI Cases. (Underscoring provided)

Based upon the Commission Summary and Statements, however, Rudd did not fully perform under the terms and conditions of the Bankruptcy Court-approved Compromise Agreement. Rather than insist upon full performance under the terms of the Compromise Agreement, or, in the alternative, insist upon renewed performance of the original agreements with Rudd, which would have greatly benefited the debtors and the creditors under their previous Plan of Arrangement, the Respondents simply entered into yet another "new" contract with Rudd. This "new" agreement with Rudd had the same impact as the Court-approved Compromise of 1973, in that all it did was cut out Petitioner and denied her the remaining brokerage commissions she was entitled to even under the terms of the "new" agreement the Respondents belatedly claimed to have entered into with her late husband. Again, it was the Respondents belated claim of this "new" agreement which forced the Bankruptcy Court to enter its Amended Order of August 26, 1977, which Amended Order had the effect of cancelling Petitioner's original contract with the Respondents.

On March 22, 1982, Bankruptcy Judge Ryan in the second Hartford bankruptcy, entered an Order containing Findings of Fact and Conclusion of Law, which Order repeated verbatim the aforementioned first three paragraphs of Respondent's Proposed Findings of Fact, etc.

The Findings of Fact contained in paragraph 3 of Bankruptcy Judge Ryan's Order of March 22, 1982, and as proposed by the Respondent-debtors, directly contradict the critical findings of fact underlying every Opinion and Order of the Courts below as held in the first Chapter XI bankruptcy proceeding, including the Order for which review is sought herein.

Based upon the findings of fact as incorporated in Judge Ryan's Order, Petitioner, the Executrix, moved in the District Court for a vacatur of its original February 22, 1978 affirmance of Bankruptcy Judge Babitt's Order of July 20, 1977 and Amended Order of August 26, 1977 in the first Chapter XI, based upon a "fraud on the Court." Upon the denial of the Executrix's motion in the District Court, she appealed the denial to the Court of Appeals for the Second Circuit, which appeal set the stage for the sua sponte permanent injunction for which review is sought herein.

FACTS (PART II)

The Court below sua sponte, and without any application therefor from any party to the litigation, and additionally without holding an Evidentiary Hearing at which witnesses could be called or evidence introduced, issued a Permanent Injunction against ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN, Deceased, DAVID K. SHUFFMAN, the Executrix's attorney, and ROSE SHUFFMAN, individually, from bringing any further proceedings or filing any further or additional papers or motions in the Court of Appeals, District Court for the Southern District of New York or the Southern District Bankruptcy Court under Dockets Numbered 73-B-674-676 or relating to HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., or any of them, with certain enumerated exceptions, principally the filing for a Writ of Certiorari in this Court. This Injunction was predicated upon a statement that it appeared to the Court from a review of all of the prior papers and proceedings theretofore had that DAVID K. SHUFFMAN, as attorney for the Executrix, and the Executrix, had without justification engaged in a pattern of conduct involving continuous false and unfounded attacks on the character and integrity of lawyers, judges and officials of the United States Department of Justice, and that they had engaged also in the filing of repetitious motions which constitute harassment of other litigants, their attorneys and the Court.

The Court below interrupted argument of the scheduled appeal of the District Court's

Order on May 17, 1982, and directed counsel to return to Court on May 21, 1982 for a hearing on an "injunction." No grounds for such injunction were stated, nor was any formal or written notice of any kind setting forth the basis of such hearing ever served. As a matter of fact, Respondent Hartford Textile Corporation and its attorneys were not even present in Court at the May 17, 1982 argument of the appeal.

At the hearing on the injunction on May 21, 1982, counsel was advised for the first time of the basis of the extraordinary hearing for a permanent injunction. The Court then denied the Executrix's counsel's request that he be allowed to be represented by an attorney, and further denied counsel's request that he be allowed to introduce evidence or to call witnesses on his and his client's behalf in support of the charges of a "fraud on the court."

The injunction, when issued, permanently enjoined both David K. Shuffman, as counsel for Rose Shuffman, As Executrix of the Estate of Oscar Shuffman, Deceased, and Rose Shuffman, As Executrix, etc. The injunction, however, also permanently enjoined Rose Shuffman, individually, even though she had never been a party to the proceedings in her individual capacity.

The evidence which counsel would have introduced, but was barred from introducing, including Bankruptcy Judge Ryan's March 22, 1982 Findings of Fact, etc., and the witnesses, whom counsel was also precluded from calling, would have conclusively established the true facts necessary to prove the charge of Respondent's "fraud on the court" and that a fraud and an injustice had indeed been perpetrated against the Petitioners.

SUMMARY OF THE ARGUMENT

1. Whether a non-party to a proceeding may be permanently enjoined from seeking a redress of grievances in a court of law, without a hearing or notice of any kind, contrary to the "Due Process Clause" of the Fifth Amendment, and this Court's interpretation and quarantee thereof in Boddie v. Connecticut, 19 S.Ct. 780 (1971); Windsor v. McVeigh, 93 U.S. 274 (1876); Baldwin v. Hale, 1 Wall 223, 17 L.Ed 531 (1963); Horvey v. Elliot, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897); and Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306 (1950);

2. Whether a litigant and the attorney for a litigant may be sua sponte permanently enjoined from taking action on behalf of his client in the Federal Courts, without an evidentiary hearing or the right to call witnesses or present evidence in his defense, contary to the authorities cited in 1. above;

3. Whether the Court of Appeals for the Second Circuit must take judicial notice of the Findings of Fact in the Order of Bankruptcy Judge Edward J. Ryan dated March 22, 1982, which Findings directly contradict the "facts" in the Order for which review is sought herein, in order to prevent a "fraud and an injustice", pursuant to Brown v. Board of Education, 344 U.S. 1 (1952), Putnam v. Day, 89 U.S. 60 (1874) and Pepper v. Litton 308 U.S. 295 (1939);

4. Whether, based upon the Findings of Fact as contained in the Order of Bankruptcy Judge Edward J. Ryan dated March 22, 1982, this Court has a duty to vacate and reverse the order below and all other orders in Hartford

related proceedings, including this Court's repeated denials of certiorari predicated upon a "fraud on the Court" perpetrated by a debtor-in-possession in order to defeat the legitimate rights of an administration creditor in a Chapter XI proceeding, pursuant to Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944).

ARGUMENT

AN INJUNCTION ISSUED SUA SPONTE AND NOT ON THE MOTION OF ANY LITIGANT, WITHOUT THE BENEFIT OF AN EVIDENTIARY HEARING AT WHICH WITNESSES AND EVIDENCE MAY BE INTRODUCED, VIOLATES THE DUE PROCESS GUARANTEE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The initial reaction to a holding that a Court can summarily issue a sua sponte Permanent Injunction without the benefit of an evidentiary hearing at which witnesses may be called or evidence introduced, or even an application therefor to justify such drastic action can hardly be anything less than amazement. Certainly, such a holding flies in the face of what has always been deemed the fundamental requisites of due process of law, notice, and a meaningful opportunity to be heard. To gauge the extent to which such a ruling counters American constitutional concepts of fairness and due process, one needs only imagine the result of this Court ruling that such action was justified and the concomitant issuance of sua sponte Injunctions by lower Federal Courts all over the land.

The issuance of such sua sponte Permanent Injunctions flies in the face of the fundamentals of notice and opportunity to be heard inherent in the Due Process Clause. In Boddie v. Connecticut, 19 S.Ct. 780 (1971), in holding that poor people have a constitutional right to sue for divorce even though they are unable to pay the requisite Court fees, this

Court said (at pages 784-786):

> Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of its system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly predictable manner. Without such a "legal system" social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts, individuals are capable of inter-dependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society. Put more succinctly, it is this injection of the rule of law that allows society to reap the benefits of rejecting what political theorists call the "state of nature".

Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurispurdence, this Court voiced the doctrine that "Wherever one is assailed in his person or his property, there he may defend." Windsor v. McVeigh, 93 U.S. 274 277, 23 L.Ed. 914 (1876). See, Baldwin v. Hale, 1 Wall. 223, 17 L.Ed. 531 (1963); Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897). The Theme that "due process of law signifies a right to be heard in one's defense".

Hovey v. Elliott, supra, at 417, 17 S.Ct. at 844, has continually recurred in the years since Baldwin, Windsor and Hovey. Although "[m]any contoversies have raged about the criptic and abstract words of the due process clause", as Mr. Justice Jackson wrote for the Court in Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), "there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at 313, 70 S.Ct. at 656.

In a footnote, this Court cited no less than fifteen (15) supporting cases. Among these are Goldberg v. Kelly, 397 U.S. 254 [1970], (Welfare recipient held constitutionally entitled to Hearing prior to suspension of benefits); Snaidach v. Family Finance Corporation, 395 U.S. 337 [1969], (prejudgment garnishment without Hearing or notice held unconstitutional); In re: Winship, 397 U.S. 358 [1970], (Procedural due process required in Juvenile Proceedings); Mullane v. Central Hanover Bank, 339 U.S. 306 [1959], (Publication service impermissible where actual residence is known).

Obviously, should the Court of Appeals have felt that there was an immediate need and possible irreparable harm, it could have proceeded by means of an Order to Show Cause, inclusive of a Temporary Restraining Order. However, that would have required that a Hearing be held on any application for a Preliminary Injunction and this was averted by the issuance of a sua sponte Permanent Injunction.

Furthermore, the Federal Rules specifically provide that all Orders issued

outside of the Trial must be done by motion on notice deemed appropriate. In the case of the sua sponte Order Appealed from, absolutely no notice other than a direction to appear in Court on May 21, 1982 for a hearing on an injunction, was issued and the Order was issued not in connection with any Trial or after any Evidentiary Hearing.

Furthermore, the Court of Appeals was not acting as a Court of original jurisdiction in this matter, it was acting as an Appellate Court and as such only had Appellate Jurisdiction.

The injunction appealed from should therefore be reversed as constitutionally infirm.

A. The Court of Appeals lacked jurisdiction to issue the injunction.

The Court of Appeals jurisdiction upon appeal from the District Court on a motion to vacate an Order of affirmance in a Bankruptcy appeal is strictly governed by Bankruptcy Rule 810 and Section 2a(10) of the Bankruptcy Act to affirm, modify or reverse the order below (which did not deal with an injunction) or to remand with instructions for further proceedings. [See, Potucek v. Cordeleria Lourdes, 310 F.2d 527, 530 (10th Cir. 1962), cert. denied, 372 U.S. 930 (1963); Allen v. Lokey, 307 F.2d 353, 354 (5th Cir. 1962); Mazur v. United States, 298 F.2d 579, 581-82 (7th Cir. 1962); Gross v. Fidelity & Deposit Co. of Md., 302 F.2d 338, 339 (8th Cir. 1962). Simon v. Agar 229 F.2d 853 (2nd Cir. 1962)]. The Court of Appeals lacked jurisdiction to issue the injunction.

B. Injunctions cannot issue without reasonable notice

A Court, like a single judge, is forbidden by statute to grant an injunction without reasonable notice to the adverse part or his attorney [New York v. Connecticut, 4 Dall 1, 1 L.Ed. 715[.

C. The injunction violated the Federal Rules of Civil Procedure

The rules provide for notice of motions, excepting those that may be heard ex-parte [Securities & Exchange Commission v. Arkansas Loan & Thrift Corp., 297 F. Supp. 73[. The injunction appealed from was issued by the Court of Appeals, acting on an appeal from the District Court on a motion to vacate its prior affirmance of an appeal from the Bankruptcy Court, without any motion, trial or evidentiary hearing at which witnesses could be called or evidence introduced.

D. The order appealed from contained statements known by the Court to be false

The Court below claimed that counsel's attacks on the character and integrity of lawyers, judges and officials of the United States Department of Justice was unfounded. However, between the date of the District Court Order denying the Executrix Motion to Vacate, etc., and the argument of the appeal in the Court of Appeals on May 17, 1982, respected syndicated columnist Jack Anderson published two articles about the Hartford bankruptcy, the first on January 2, 1982 and the next on March 6, 1982.

In his first article, Mr. Anderson, referred to the "Soviet" style justice employed

by the Second Circuit in its previous efforts to silence the Petitioner herein, and more especially her counsel, in their efforts to vacate and reverse the fraud and injustice that had permeated the Hartford proceedings. These "Soviet" style tactics included a sua sponte Order for disciplinary proceedings against Petitioner's counsel, which disciplinary proceedings were dismissed by the appropriate State Disciplinary Committee, and a further illegal attempt by the Second Circuit to tamper with and influence the State's Grievance Committee to assure a civil commitment of Petitioner's counsel into a psychiatric institution. Mr. Anderson based his article upon documentary evidence obtained from the State Disciplinary Committee's files after all charges against Petitioner's counsel were dismissed.

In his second article, Mr. Anderson exposed the apparent "fix" by Judge Babitt (who has since resigned from the Bench), and the apparent cover up of the "fix" by the higher courts during the course of the various appeals. The second article was again based upon documentary evidence, this time obtained from the files of the Courts below.

E. The preclusion of witnesses and evidence, including the March 22, 1982 Findings of Fact and Order of Bankruptcy Judge Edward J. Ryan, and the failure to take judicial notice thereof, resulted in a travesty of justice, which this Court is duty-bound to correct.

The Court below erred in its refusal to allow the introduction of evidence or the

calling of witnesses, thereby precluding Petitioners from a meaningful right to be heard. As recently as June 30, 1982, the Third Circuit Court of Appeals, in In re Lanzy Oliver, 682 F.2d 443 reversed a sua sponte permanent injunction issued by the District Court, predicated upon the obvious abridgement of constitional rights where a meaningful right to be heard was denied. According to the Third Circuit, a meaningful right to be heard was a fundamental guarantee embedded in the Constitution, which must be afforded before an injunction may issue. This was so, no matter how frivolous the arguments against such issuance of an injunction might be.

The Court below compounded its error when it refused to take judicial notice of the Findings of Fact in Bankruptcy Judge Ryan's Order of March 22, 1982, which clearly showed Respondent's continuing "fraud on the court". Brown v. Board of Education, 344 U.S. 1, (1952); Putnam v. Day, 89 U.S. 60 (1874).

Had the Court below taken judicial notice of Judge Ryan's Findings of Fact, it would have come to the inescapable conclusion that a fraud and an injustice had been perpetrated against Petitioners, requiring that all of its prior Orders be vacated because of Respondents' "fraud on the Court." Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944); Pepper v. Litton, 295 U.S. 308 (1939).

Of course, had the Court below taken judicial notice of the Findings of Fact contained in Judge Ryan's March 22, 1982 Order, the sua sponte permanent injunction would have never issued.

IMPORTANCE OF THIS PETITION

This petition presents a situation where the Court of Appeals for the Second Circuit has determined federal questions (a) inconsistent with prior rulings of this Court and (b) in conflict with rulings of another Circuit:

(1) In Boddie v. Connecticut, 19 S. Ct. 780 (1971); Windsor v. McVeigh, 93 U.S. 274 (1876); Baldwin v. Hale, 17 L.Ed. 531 (1963); Hovey v. Elliot, 167 U.S. 409 (1897); and Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306 (1950), this Court stressed a litigant's unquestional constitutional right to due process of law. The Court of Appeals for the Third Circuit, in In re: Lanzy Oliver, reaffirmed the constitutional guarantee of a "meaningful" opportunity to be heard. Yet, the Second Circuit issued a sua sponte permanent injunction without affording the Petitioners the right to introduce evidence or call witnesses at an evidentiary hearing, in clear violation of the Fifth Amendment's guarantee of "due process" of law.

(2) The Second Circuit refused to take judicial notice of the Findings of Fact in an Order of the Bankruptcy Court dated March 22, 1982, which findings conclusively established Respondents' "fraud on the Court." This refusal is contrary to the holdings of this Court in Brown v. Board of Education, 344 U.S. 1 (1952) and Putnam v. Day, 89 U.S. 60 (1874), and allowed a perpetuation of a fraud and an injustice in contradiction of this Court's dicta in Pepper v. Litton, 308 U.S. 295 (1938).

(3) The Second Circuit, in issuing its sua sponte permanent injunction, implicitly held that it did not have a duty to vacate and reverse its prior Orders based upon a "fraud on the court" perpetrated by a debtor-in-possession, contrary to this Court's holding in Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944).

As such, this case presents the ideal case for a review and reaffirmation of a litigant's Fifth Amendment guarantee of "due process" of law, and the Federal Court's duty to guarantee same.

(4) The Second Circuit, in issuing its scice sponte permanent injunction against Rose Shuffman, individually, a non-party to the proceedings below, violated the fundamental guarantee of "due process" of law embedded in the Fifth Amendment to the Constitution.

CONCLUSION

Petitioners respectfully pray that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

DAVID K. SHUFFMAN
Attorney for the Petitioners
14 East 60th Street
New York, New York 10022
(212) 755-0006

UNITED STATES COURT OF APPEALS
For the Second Circuit

Cal. No. 991 August Term, 1981

(Hearing May 21, 1982 Decision June 16, 1982

Docket No. 82-5003

In the Matter of HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,

Debtors,

ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN,

Appellant,

v.

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,

Appellees.

BEFORE: TIMBERS, VAN GRAAFEILAND and KEARSE, Circuit Judges.

Hearing on notice to determine whether injunction should issue against continuance of frivolous and vexatious litigation. Injunction issued.

DAVID K. SHUFFMAN, New York, NY
for Appellant

BRUCE R. ZIRINSKY, New York, NY
for Appellees

PER CURIAM:

This case, which has an almost unparalleled history of frivolous and repetitious claims, motions, petitions, demands, and appeals, arose out of the bankruptcy court's denial of appellant's claim for $80,000 sales commissions allegedly owed to appellant's deceased husband. See In re Hartford Texile Corp., 588 F.2d 872 (2d Cir. 1978), cert.denied, 444 U.S. 870 reh'g denied, 444 U.S. 975 (1979). Before this Court heard argument on the merits for the first time, appellant already had made at least twenty-five motions, most of which were meritless and repetitious. Among them were motions to disqualify the bankruptcy judge and Hartford Textile Corporation's attorneys and for the appointment of a special prosecutor. Id. at 876. We stated then that we did not condone the course of conduct that appellant's counsel had pursued. Id. n.3.

Somewhat of the tortuous history of this litigation can be gleaned from later reported decisions of this Court. In Matter of Hartford Textile Corp., 613 F.2d 384 (2nd Cir. 1979), cert. denied, 447 U.S. 907 (1980), we said that, since the 1978 opinion was filed, appellant had "more than doubled her previous output of meritless, frivolous filings" and her application had necessitated twenty-three en banc orders from this Court. Id. at 386. We warned appellant and her attorney then that further frivolous, vexatious, or repetitious motions might result in the issuance or injunctive restraint. Id. We affirmed the order appealed from and awarded appellees double costs.

In Matter of Hartford Textile Corp., 613 F.2d 388 (2d Cir. 1979), cert. denied, 477 U.S. 907 (1980), we stated that appellant's activities "have grossly abused the judicial process." Id. at 391. We reversed a sua sponte order of the district court, which enjoined further litigation by appellant and her attorney, only because the order was entered without notice. Id. at 390.

The appeal in In re Hartford Textile Corp., 648 F.2d 812 (2d Cir. 1981), involved the bankruptcy court's refusal to hold the United States Attorney for the Southern District of New York in contempt for failing to investigate and prosecute a Hartford Textile Corporation officer and the Company attorney. We dismissed that appeal as frivolous and again awarded double costs.

On May 20, 1981, appellant was in our Court once again, arguing that the bankruptcy court should have granted her motion for the appointment of a receiver. In re Hartford Textile Corp., 659 F.2d 299 (2d Cir. 1981). In an opinion filed on September 16, 1981, we held that the appeal was frivolous and stated:

> As of the date of the instant opinion, by actual count, we find that Shuffman during the past three years has inundated this Court with more than a hundred motions, petitions, requests, appeals and other filings, virtually all of which have been utterly frivolous, totally devoid of merit, obviously repetitive and demonstrably vexatious.

Id. at 305

We Also pointed out that the Supreme Court had denied at least twelve petitions filed by appellant's attorney and that appellant's filings in the district and bankruptcy courts had been "countless". We affirmed the order appealed from, and awarded double costs and $5,000 in damages against appellant's attorney. Shuffman' petition for certiorari was denied by the Supreme Court, 50 U.S.L.W. 3765 (U.S. Mar. 22, 1982)

Despite our award of double costs and damages, harassment continued. Four motions seeking relief from the award were denied by this Court. Appellant returned to this Court on April 23, 1982 appealing the district court's refusal to "sua sponte advise" this Court of an alleged error in a prior district court memorandum and order and asking for the fifth time that this Court vacate its September 16, 1981 award. Matter of Hartford Textile Corp., No. 81-5067 (2d Cir. May 17, 1982). On May 17, 1982 we rejected this appeal for lack of jurisdiction.

On May 9, 1981, Shuffman had moved in the district court for an order vacating the district court's order of February 22, 1978, which had been affirmed by this Court in our first opinion. 588 F.2d at 876. The district court denied this application on November 18, 1981. On November 25, 1981, Shuffman moved for a rehearing, and this motion promptly was denied. On January 6, 1982, Shuffman again appealed. This appeal was heard on May 17, 1982, and has since been affirmed, appellant's arguments once again having been found frivolous and completely without merit. At Oral argument, we notified counsel that a hearing would be held on May 21, 1982, on the question whether an injunction should issue, and instructed counsel to appear on that day prepared to argue whether further proceedings in the matter should be enjoined.

Appellant's presentation to this Court on May 21, 1982, consisted simply of a repetition of the arguments rejected time and again by this Court. In addition, questioning of counsel disclosed that the several judgments entered against appellant and/or her attorney for costs and damages remained unsatisfied.

The equity power of a court to give injunctive relief against vexatious litigation is an ancient one which has been codified in the All Writs Statute, 28 U.S.C. § 1651(a) (1976). Ward v. Pennsylvania New York Central Transportation Co., 456 F.2d 1046, 1048 (2d Cir. 1972); Sperry Rand Corp. v. Rothlein, 288 F.2d 245, 249 (2d Cir. 1961); Gordon v. U.S. Department of Justice, 558 F.2d 618 (1st Cir. 1977); Clinton v. United States, 297 F.2d 899, 901-02 (9th Cir. 1961); Meredith v. John Deere Plow Co., 261 F.2d 121, 124 (8th Cir. 1958), cert. denied, 359 U.S. 909 (1959).[1] The time has come to exercise that power and bring this litigious charade to a halt.

As we stated in our prior holdings, the proceedings initiated and pursued by appellant and her attorney have been meritless and frivolous. They have resulted in vexation, harassment and needless expense to the appellees

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[1] Courts also have traditional powers to stay further litigation where a plaintiff has failed to pay a judgment for costs entered against him in the same matter. Gaussen v. United Fruit Co., 317 F. Supp. 813, 814 (S.D.N.Y. 1970); Commercial Banking Corp. v. Martel, 44 F. Supp. 792 (S.D.N.Y. 1942.)

and have placed an unnecessary burden on the courts and their supporting personnel. We are convinced that, unless precluded from so doing, appellant and her attorney will continue to make similar groundless and vexatious claims in the future and that, therefore, an injunction should issue to prevent the continuance of such harassment. Accordingly, it is hereby

ORDERED that Rose Shuffman, individually and as Executrix of the Estate of Oscar Shuffman, and her attorney David K. Shuffman, and each of them, are permanently enjoined from proceeding further in any manner whatsoever with the prosecution of the above-entitled proceeding, except (1) to seek rehearing with respect to this order by this panel or by the Court en banc, (2) to seek review of this order in the Supreme Court, and (3) to file papers responding to or opposing any application that may be made hereafter by any other party, provided that such papers are addressed solely to the arguments presented in the application and do not contain irrelevant matter; and it is further

ORDERED that Rose Shuffman, individually and as Executrix of the Estate of Oscar Shuffman, and her attorney David K. Shuffman, and each of them, are permanently enjoined from relitigating or attempting to relitigate in any court in the United States, any of the claims, causes of action, or legal issues, that have been litigated already in the above proceeding; and it is further

ORDERED that, except as permitted in the first ORDERED paragraph above, Rose Shuffman, individually and as Executrix of the Estate of Oscar Shuffman, and her attorney David K. Shuffman, and each of them, are enjoined and precluded from filing any further papers in the above-entitled proceeding in the office of the Clerk of the Bankruptcy Court, the office of the Clerk of the United States District Court for the Southern District of New York or the office of the Clerk of the United States Court of Appeals for the Second Circuit without the further order of this Court.

SO ORDERED.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 17th day of September, one thousand nine hundred and eighty-two.

IN THE MATTER OF HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:	
Debtors,	:	No. 82-500
ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN,	:	
Appellant,	:	
-v-	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:	
Appellees.	:	

A petition for rehearing containing a suggestion that the injunction entered on June 16, 1982, be reheard in banc having been filed herein by David K. Shuffman, both as counsel for the appellant, Rose Shuffman as Executrix of the

Estate of Oscar Shuffman, and on his own behalf,

Upon consideration by the panel that issued the injunction, it is

ORDERED that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that issued the injunction and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro, Clerk

by:

/s/ FRANCIS X. GINDHART
Francis X. Gindhart
Chief Deputy Clerk